RECORD AND BRIEFS

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No. 16-111

In The
Supreme Court of the United States

MASTERPIECE CAKESHOP, LTD.
AND JACK C. PHILLIPS,

Petitioners,

v.

COLORADO CIVIL RIGHTS COMMISSION,
CHARLIE CRAIG, AND DAVID MULLINS,

Respondents.

On Writ Of Certiorari To The Colorado Court Of Appeals

BRIEF OF *AMICUS CURIAE* CHRISTIAN LAW ASSOCIATION IN SUPPORT OF PETITIONERS

DAVID C. GIBBS, JR.
GIBBS & ASSOCIATES LAW FIRM, LLC
5412 Courseview Drive, Suite 122
Mason, OH 45040
(513) 234-5545
dgibbsjr@gibbs-lawfirm.com

Counsel for Amicus Curiae

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

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INTEREST OF *AMICUS CURIAE*[1]

Since its founding in 1969, Christian Law Association has provided the funding to retain legal assistance with no charge to Bible-believing churches and Christians who are experiencing difficulty in practicing their religious faith because of governmental regulation, intrusion, or prohibition in one form or another.

Attorneys retained by Christian Law Association have represented Christian ministries and individuals, and local businesses operated by Christians before local governmental bodies, as well as state and federal administrative agencies and courts in issues impacting their clients' ability to freely exercise their faith as protected by the First Amendment.

The case now before the Court deeply concerns the Christian Law Association because the decision of the Colorado Court of Appeals furthers the disturbing trend of government compelling private citizens, including those who CLA serves, to abandon their rights of conscience to be able to participate in the public marketplace.

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[1] Pursuant to Sup. Ct. R. 37.6, *amicus curiae* and its counsel state that none of the parties to this case nor their counsel authored this brief in whole or in part, and that no person or entity other than *Amicus* made a monetary contribution specifically for the preparation or submission of this brief. *Amicus curiae* files this brief with the written consent of Petitioners and Respondent Colorado Civil Rights Commission, copies of which are on file in the Clerk's Office. Counsel for Respondents Charlie Craig and David Mullins consented in writing on September 4, 2017.

SUMMARY OF THE ARGUMENT

At its heart this case involves the authority of the State of Colorado, if any, to officially compel a private citizen to declare a belief that is contrary to and violative of his own religious beliefs. The original settlement of what is now the United States was largely motivated by groups of immigrants from Europe fleeing governments which were persecuting them, even to death, because they refused to submit, by their speech and actions, to the current official religious or political orthodoxy. These people were seeking a country in which their rights of conscience were protected and, indeed, celebrated. The decision of the Court below perpetuates a frightening governmental trend to force citizens to deny their own consciences and to compel them to goose step to current political correctness.

The *amicus* believes that this Court's First Amendment decisions, including *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943), requires the Court to reverse the decision below in order to protect the rights of conscience our Founding Fathers were so careful to protect with the First Amendment to the U.S. Constitution.

ARGUMENT

I. UNDERLYING FACTS AND PROCEDURES OF THE CASE BELOW DEMONSTRATE THAT MR. PHILLIPS'S RIGHTS OF CONSCIENCE MOTIVATED HIS CONDUCT.

The facts of this case are not in dispute. In summary, Petitioners Jack Phillips and his business, Masterpiece Cakeshop, Ltd., declined the Respondents' request to "design and create a cake to celebrate their same-sex wedding. Mr. Phillips declined, telling them that he does not create wedding cakes for same-sex weddings because of his religious beliefs." *Mullins v. Masterpiece Cakeshop, Ltd.*, 370 P.3d 272, 276 (Colo. App. 2015). In response to Mr. Phillips's declination, Respondents filed sexual orientation discrimination charges with the Colorado Civil Rights Division under Colorado's Anti-Discrimination Act (CADA), Colo. Rev. Stat. §§ 24-34-3011 to -804.

After Respondents filed a formal complaint with the Colorado Office of Administrative Courts, the ALJ "found that Phillips has been a Christian for approximately thirty-five years and believes in Jesus Christ as his Lord and savior. Mr. Phillips believes that decorating cakes is a form of art, that he can honor God through his artistic talents, and that he would displease God by creating cakes for same-sex marriages." *Mullins*, 370 P.3d at 277.

Despite the undisputed fact that Mr. Phillips's religious beliefs prohibited him from using his artistry to celebrate same-sex marriages, ultimately the Colorado

Civil Rights Commission affirmed the ALJ's decision in favor of Respondents and ordered Mr. Phillips to design wedding cakes that celebrate same-sex marriages if he designs wedding cakes for opposite-sex weddings, reeducate his staff on CADA compliance, and make quarterly reports about his CADA compliance.

II. THE COURT SHOULD GRANT THE PETITION TO HOLD THAT THE COMMISSION'S DECISION VIOLATES MR. PHILLIPS'S FIRST AMENDMENT RIGHTS OF CONSCIENCE.

The Colorado Court of Appeals decision violates Petitioners' rights of conscience in violation of the First Amendment. "Conscience" is defined by the Merriam-Webster Dictionary as "the sense or consciousness of the moral goodness or blameworthiness of one's own conduct, intentions, or character together with a feeling of obligation to do right or be good." "Conscience," https://www.merriam-webster.com/dictionary/conscience (last visited Sept. 4, 2017).

While too often individuals tend to ignore their consciences, the clients the *amicus* serves hold as sincerely held religious beliefs that the *Holy Bible* commands them to always have a clear conscience before God.[2] They further believe that the abandonment of that clear conscience is sin and will spiritually destroy

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[2] "And herein do I exercise myself, to have always a conscience void to offence toward God, and toward men." (Acts 21:16)

the believer.[3] God does not excuse them for denying their conscience simply because a government forces them to recant their faith. Faith that can be abandoned upon fear of punishment is a mere sham, not true faith.[4] The interest of individuals in the United States who hold similar religious beliefs are placed in extreme and, they believe, even eternal jeopardy by the attempt of state and local governments to coerce them to abandon their faith.

The history of the world and of this country is over-full of examples of people of faith who suffered persecution and death rather than violate their conscience just to avoid government sanctions for their refusal to bend the knee.

> Early Christians were frequently persecuted for their refusal to participate in ceremonies before the statute [*sic.*] of the emperor or other symbol of imperial authority. The story of William Tell's sentence to shoot an apple off his son's head for refusal to salute a bailiff's hat is an ancient one. 21 Encyclopedia Britannica (14th ed.) 911-912. The Quakers, William Penn included, suffered punishment rather than uncover their heads in deference to any civil authority. Braithwaite, The Beginnings of Quakerism (1912) 200, 229-230, 232-233,

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[3] "Holding faith, and a good conscience; which some having put away concerning faith have made shipwreck." (1 Timothy 1:19)

[4] "Now the end of the commandment is charity out of a pure heart, and of a good conscience, and of faith unfeigned." (1 Timothy 1:5)

447, 451; Fox, Quakers Courageous (1941) 113.

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 633 n. 13 (1943). Although the case herein concerns a man's right of conscience as motivated by his religious beliefs, it is not only religious beliefs that may oblige a man's sense that he must do right or be good.

A man's conscience may also impose intellectual or political motivations that oblige him to speak or act; sometimes those motivations oblige him to speak or act in a manner that may be out-of-step with the majority. The brilliance of the panoply of the First Amendment press, speech/expression, and religion provisions are that they were intended to protect even contrary and offensive opinions and speech.

In *Barnette, supra*, this Court struck down a local regulation requiring public school students to salute and pledge allegiance to the American flag. The Court found that the flag salute and pledge regulation "requires affirmation of a belief and an attitude of mind." *Id.* The Colorado statute and decision being reviewed herein requires Mr. Phillips to make the same salute and pledge to same-sex weddings. The application of CADA to Mr. Phillips compels him, contrary to his conscience, to affirm a belief and assume an attitude of mind by ordering him to actively create a piece of art celebrating, and undergo "training" to bring his attitude of mind into conformity with the celebration of, a

religious ceremony that is diametrically opposed to his own conscience.

As applied in this case, the State of Colorado wields its official power to coerce a single private citizen and his lone, wholly owned private business to fall into step with the government's determination as to what a man should believe and how he should exercise that belief. The First Amendment prohibits the State's authority to do so.

> [W]e apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. . . . We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. . . . [F]reedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

Id., at 641-642. Individuals who do not agree with the majority are just as entitled to First Amendment protection as those who do fall within the ranks of the majority.

The Colorado Anti-Discrimination Act seeks to legislate against the diversity of religious individualism that the First Amendment enshrines. In the State's efforts to legislate diversity, it has instead, especially with reference to First Amendment protections,

penalized the diversity of those who disagree with the orthodoxy of the State by requiring them to deny their conscience upon penalty of evicting them from the public marketplace. The First Amendment prohibits any governmental compulsion to confess by word or act a faith in a political or religious orthodoxy.

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion *or force citizen to confess by word or act their faith therein.* If there are any circumstances which permit an exception, they do not now occur to us.

Id., at 642 (emphasis added). If the patriotic salute and pledge to the American flag is not a circumstance entitled to an exception from First Amendment protection against coerced speech, the design and creation of a cake to celebrate a same-sex wedding certainly should not be entitled to an exception.

CONCLUSION

The State of Colorado is forcing Jack Phillips to deny his conscience and to affirmatively celebrate same-sex weddings to be able to participate in the benefits of operating a business. The First Amendment was adopted to restrain the State from coercing a man to "confess by word or act" his agreement with the orthodoxy of the State. Punishing Mr. Phillips for his

exercise of his right to believe differently and act upon those differences violates the First Amendment.

The State of Colorado's application of CADA to Mr. Phillips by the decision below defeats the goal of diversity by trying to sanction the differences out of Mr. Phillips. This Court should reverse the decision of the Court of Appeals because it infringes upon his First Amendment rights of speech/expression and religious exercise.

Respectfully submitted,

DAVID C. GIBBS, JR.
GIBBS & ASSOCIATES LAW FIRM, LLC
5412 Courseview Drive, Suite 122
Mason, OH 45040
(513) 234-5545
dgibbsjr@gibbs-lawfirm.com

Counsel for Amicus Curiae